

§ 779.21

§ 779.21 Enterprise.

(a) Section 3(r) of the Act provides, in pertinent part that “enterprise” as used in the Act:

means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor: *Provided*, That, within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement, (a) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (b) that it will join with other such establishments in the same industry for the purpose of the collective purchasing, or (c) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments * * *

The scope and application of this definitional language is discussed in subpart C of this part.

(b) The 1966 amendments added two clauses to the above language of the definition to make it clear that “the activities performed by any person or persons” will be regarded as performed for a business purpose if they are performed:

(1) In connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, an elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(2) In connection with the operation of a street, suburban, or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not

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such railway or carrier is public or private or operated for profit or not for profit).

A discussion of the scope and application of this added language is contained in part 776 of this chapter.

§ 779.22 Enterprise engaged in commerce or in the production of goods for commerce.

The portions of the former and present definitions of “enterprise engaged in commerce or in the production of goods for commerce” (contained in section 3(s) of the Act prior to the 1966 amendments and as amended in 1966) which are important to a determination of the application of provisions of the Act to employees employed by retailers generally and by certain retail or service establishments are as follows:

Previous coverage (prior to the 1966 amendments):

(s) Enterprise engaged in commerce or in the production of goods for commerce means any of the following in the activities of which employees are so engaged, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person:

(1) Any such enterprise which has one or more retail or service establishments if the annual gross volume of sales of such enterprise is not less than \$1 million, exclusive of excise taxes at the retail level which are separately stated and if such enterprise purchases or receives goods for resale that move or have moved across State lines (not in deliveries from the reselling establishment) which amount in total annual volume to \$250,000 or more;

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(5) Any gasoline service establishment if the annual gross volume of sales of such establishment is not less than \$250,000, exclusive of excise taxes at the retail level which are separately stated:

Provided, That an establishment shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce, or a part of an enterprise engaged in commerce or in the production of goods for commerce, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection, if the only employees of such establishment are the owner thereof or persons standing in the relationship of parent, spouse, or child of such owner.

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New coverage (beginning with the 1966 amendments):

(s) *Enterprise engaged in commerce or in the production of goods for commerce* means an enterprise which has employees engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person, and which:

(1) During the period February 1, 1967, through January 31, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated) or is a gasoline service establishment whose annual gross volume of sales is not less than \$250,000 (exclusive of excise taxes at the retail level which are separately stated), and beginning February 1, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than \$250,000 (exclusive of excise taxes at the retail level which are separately stated);

* * * * *

(4) Is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, an elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit).

Any establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

§ 779.23 Establishment.

As used in the Act, the term *establishment*, which is not specially defined therein, refers to a "distinct physical place of business" rather than to "an entire business or enterprise" which may include several separate places of business. This is consistent with the meaning of the term as it is normally used in business and in government, is judicially settled, and has been recognized in the Congress in the course of enactment of amendatory legislation (*Phillips v. Walling*, 324 U.S. 490; *Mitchell*

v. Bekins Van & Storage Co., 352 U.S. 1027; 95 Cong. Rec. 12505, 12579, 14877; H. Rept. No. 1453, 81st Cong., 1st Sess., p. 25). As appears more fully elsewhere in this part, this is the meaning of the term as used in sections 3(r), 3(s), 6(d), 7(i), 13(a), 13(b), and 14 of the Act.

§ 779.24 Retail or service establishment.

In the 1949 amendments to the Act, the term "retail or service establishment", which was not previously defined in the law, was given a special definition for purposes of the Act. The legislative history of the 1961 and the 1966 amendments to the Act, which use the same term in a number of provisions relating to coverage and exemptions, indicates that no different meaning was intended by the term "retail or service establishment" as used in the new provisions from that already established by the Act's definition. On the contrary, the existing definition was reenacted in section 13(a)(2) of the Act as amended in 1961 and 1966 as follows: "A 'retail or service establishment' shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry". The application of this definition, which has had much judicial construction since its original enactment, is considered at length in subpart D of this part. As is apparent from the quoted language, not every establishment which engages in retail selling of goods or services will constitute a "retail or service establishment" within the meaning of the Act.

Subpart B—Employment to Which the Act May Apply: Basic Principles and Individual Coverage

GENERAL PRINCIPLES

§ 779.100 Basic coverage in general.

Except as otherwise provided in specific exemptions, the minimum wage, maximum hours, overtime pay, equal pay, and child labor provisions of the Act have applied and continue to apply subsequent to the 1966 amendments to